

Rural Litigation and Entitlement Kendra and Others

Vs

State of Uttar Pradesh and Others

And

Devaki Nandan Pandey

Vs

Union of India and Others

Writ Petitions Nos. 8209 and 8821 of 1983

(Ranganath Misra, P. N. Bhagwati JJ)

18.12.1986

JUDGMENT

RANGANATH MISRA, J. -

1. On March 12, 1985, after hearing counsel and parties appearing in person at great length this Court made a detailed order wherein it was said : (SCC p. 432, Para 1)

This case has been argued at great length before us not only because a larger number of lessees of limestone quarries are involved and each of them has painstakingly and exhaustively canvassed his factual as well as legal points of view but also because this is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country. But since having regard to the voluminous material placed before us and the momentous issues raised for decision, it is not possible for us to prepare a full and detailed judgment immediately and at the same time, on account of interim order made by us, mining operations carried out through blasting have been stopped and the ends of justice require that the lessees of limestone quarries should know, without any unnecessary delay, as to where they stand in regard to their limestone quarries, we propose to pass our order on the writ petitions. The reasons for the order will be set out in the judgment to follow later.

2. In the meantime, one of us our learned Brother A. N. Sen, J., has retired from the court. Before that event happened, on September 30, 1985, he delivered a judgment expressing his views on the matter. He indicated :

I do not think it necessary to give any further reasons than those which are already stated in the order made by us on March 12, 1985. Speaking personally for myself. I

think that the broad reasons have been adequately set out in the order and it would be an unnecessary exercise to elaborate them.

On a perusal of our order of March 12, 1985, we are inclined to agree with his view that the detailed order covered almost all the relevant aspects and touched upon every issue germane to the matter.

3. As this was the first case of its type with wide and serious ramifications, we would like to give a brief account of the manner in which the proceedings commenced, were carried on and are to be concluded.
4. By an order dated July 14, 1983, this court directed a letter received from the Rural Litigation and Entitlement Kendra, Dehra Dun dated July 2, 1983 along with accompanying affidavits to be treated as a writ petition and issued notice to the State of Uttar Pradesh and the Collector of Dehra Dun. The main allegation therein related to unauthorised and illegal mining operations carried on in the Mussoorie Hills and the area around adversely affecting the ecology of the area and leading to environmental disturbances. Later on, another application was directed to be tagged on and both the applications dealt with together. Several parties, mainly mining lessees numbering more than 100, got impleaded either at the instance of the petitioners or on their own seeking. By a later order made in the month of July 1983, this Court directed all fresh quarrying to be stopped and called upon the District Magistrate and the Superintendent of Police of Dehra Dun District to strictly enforce that order.
5. On August 11, 1983, after hearing the counsel for parties then appearing, this Court appointed a Committee for the purpose of inspecting all the mines other than those belonging to the State of Uttar Pradesh and the Union of India, with a view to determining whether the safety standards laid down in the Mines Act, 1952, and the Mines Rules made there-under were being observed or not and whether there was any danger of landslides on account of the quarrying operations particularly during the monsoon in any of the mines and if there was any other hazard to individuals, cattle or agricultural lands by reason of the carrying on of mining operations. Blasting operations in the area were also directed to be stopped. This Committee came to be known as the Bhargava Committee and its members were authorised to inspect the mines and give suitable directions. The Committee made its main report on the basis whereof this Court on August 24, 1983 permitted removal of limestone already quarried. The Committee directed closure of some of the mines and reported the defects appearing in the other mines and called upon the mine owners to carry out rectifications.
6. The Bhargava Committee classified the mines in the area into three groups being A, B and C. So far as the mines in Group C were concerned, the Committee was of the view that they were not suitable for continuance and should, therefore, be closed down. So far as the question related to the mines in Group A the Committee was of the opinion that the quarrying could be carried on without any environmental or ecological hazard. In regard to the Group B mines, the Bhargava Committee opined that those may not be closed down permanently though it did notice the adverse impact of their mining activities. In its order of March 12, 1985, this Court took note of the fact that the Union Government had appointed a working Group on mining of limestone quarries in Dehra Dun and Mussoorie area some time in 1983 and the Working Group was also headed by Shri Bhargava who was heading the Committee appointed by this court. The other members of the Working Group were experts in the field and the Working Group had submitted the report in September 1983. A comparative analysis was made by this Court in regard to the mines by referring to both the reports. The court found that the Working Group had taken these very mines for their study and had divided the mines into two categories - Namely, Class I and Class II. It transpires that all the mines then

categorised as Class I were now included by the Bhargava Committee in Group A and the remaining mines now classified as Group B and C by the Bhargava Committee were in Class II.

7. This Court had also appointed an Expert Committee with Professor Valdia and two Members mainly to consider the problems of ecology and environment with reference to mining. Professor Valdia gave a separate report while the other two members gave a joint report. Dealing with the separate report furnished by Professor Valdia, this Court in its order of March 12, 1985 stated : (SCC p. 434, Para 5)

..... we may observe straightway that we do not propose to rely on the Report of Prof. K. S. Valdia, who was one of the members of the Expert Committee appointed by us by our Order dated September 2, 1983, as modified by the Order dated October 25, 1983. This Committee consisted of Prof. K. S. Valdia, Shri Hukum Singh and Shri D. N. Kaul and it was appointed to inquire and investigate into the question of disturbance of ecology and pollution and affectation of air, water and environment by reason of quarrying operations or working of stone crushers or limestone kilns. Shri D. N. Kaul and Shri Hukum Singh submitted a joint report in regard to various aspects while Prof. K. S. Valdia submitted a separate report. Prof. K. S. Valdia's report was confined largely to the geological aspects and in the report he placed considerable reliance on the Main Boundary Thrust (hereinafter shortly referred to as MBT) and he took the view that the limestone quarries which were dangerously close to the MBT should be closed down, because they were in the sensitive and vulnerable belt. We shall examine this report in detail when we give our reasons but we may straightway point out that we do not think it safe to direct continuance or discontinuance of mining operations in limestone quarries on the basis of the MBT.

At the further hearings after the said order, parties did not address arguments with reference to MBT and we are of the view that this topic need not be dealt with by us. In March 12, 1985 order we directed that the limestone quarries located in Sahasradhara Block and placed in Category II by the Working Group should be closed down. We further said : (SCC p. 435, Para 8)

We would also direct, agreeing with the Report made by the Working Group that the limestone quarries placed in Category II by the Working Group other than those which are placed in Categories B and C by the Bhargava Committee should also not be allowed to be operated and should be closed down save and except for the limestone quarries covered by mining leases Nos. 31, 36 and 37 for which we will give the same direction as we are giving in the succeeding paragraphs in regard to the limestone quarries classified as Category B in the Bhargava Committee Report. If there are any subsisting leases in respect of any of these limestone quarries they will forthwith come to an end and if any suits or writ petitions for continuance of expired or unexpired leases in respect of any of these limestone quarries are pending, they too will stand dismissed.

8. This Court directed closing down of the mines in A Category located within the municipal limits of Mussoorie.

9. In regard to B Class quarried of the Bhargava Committee Report which featured in Category II of the Working Group Report, as also of the A Category quarries within the municipal limits, we set up a Committee under the chairmanship of Shri D. Bandopadhyay, then Secretary in the Ministry of Rural Development and called upon the mine owners to submit a full and detailed scheme to that Committee which would examine the said scheme keeping in view the provisions of the law as also

the expediency of allowing mining operations in the area and report to the court about the same. We have directed that until further orders from this Court on the basis of Bandopadhyay Committee report these mines shall not be worked. It may be pointed out that the Bandopadhyay Committee has submitted its report rejecting the schemes put forward by various lessees of the mines which have been closed down and on November 20, 1986 this court has directed :

We are informed that Bandopadhyay Committee has submitted its report rejecting the schemes put forward by various erstwhile lessees of the mines which have been closed down now. This report was made as far back as in April 1986 and those who wanted to raise objections, ought to have done so within a reasonable time after the report was submitted and those who have failed to do so, we cannot shut them out and prevent them from raising their objections : and in any event delay in filing cannot prejudice public interest since stone quarrying had already closed down. We would, therefor, grant time to the erstwhile lessees of mines, who wish to raise objections, to file their objections within six weeks from today and reply, if any, to those objections may be filed on behalf of the petitioners and the State of Uttar Pradesh within four weeks thereafter.

The old record of the case may also be kept in court at the time of the hearing of this writ petition.

Writ petition will come up for hearing the third Tuesday in February 1987 before a Bench of which Hon'ble Mr. Justice Ranganath Misra is a member.

10. From the aforesaid order it is clear that in view of the directions given by this Court the question still remains to be considered whether the schemes submitted by the mine lessees to the Bandopadhyay Committee under our order dated March 12, 1985 have been rightly rejected or not and whether under those schemes, the mine lessees can be allowed to carry on mining operations without in any way adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands. This question would, of course, have to be decided in the light of the view taken by us in our order dated March 12, 1985 and the present judgment.

11. The Himalayan range on the northern boundary of India is the most recent mountain range and yet it is the tallest. It has formed the northern boundary of the country and until recent times provided an impregnable protection to the Indian sub-continent from the northern direction. This mountain range has been responsible to regulate the monsoons and consequently the rainfall in the Indo-Gangetic belt. The Himalayas are the source for perennial rivers the Ganges, Yamuna and Brahmaputra as also several other tributaries which have joined these main rivers. For thousands of years nature has displayed its splendour through the lush green trees, innumerable springs and beautiful flowers. The Himalayas has been the storehouse of herbs, shrubs and plants. Deep forests on the lower hills have helped to generate congenial for good rain.

12. The Doon Valley has been an exquisite region bounded by the Himalayan and the Shivalik ranges and the Ganga and Yamuna rivers. The perennial water streams and the fertile soil have contributed not only to the growth of dense lush green forests but have helped the yield of basmati rice and leechis. Mussoorie, known as the queen of Indian hill stations situated at a height of 5000 ft. above sea level and Dehra Dun located below the heights have turned out to be important places of tourist attraction, centres of education, research and defence complex.

13. At present the Valley is in danger because of erratic, irrational and uncontrolled quarrying of limestone. The landscape has been stripped bare of its verdant cover. Green cover today is about 10 per cent of the area while some decades ago it was almost 70 per cent.

14. The limestone belt has acted as the aquifer - To hold and release water perennially. All the important streams - Song, Baldi, Rispana, Kairuli and Bhitarli originate from this area. Reckless mining, careless disposal of the mine-debris and random blasting operations have disturbed the natural water system and the supply of water both for drinking and irrigation has substantially gone down. There is a growing apprehension that if mining carried on in this process, a stage will come when there would be dearth of water in the entire belt.

15. About a hundred years back around the middle of the last century, Britishers penetrated into the area and developed Mussoorie as a Hill Resort. The existence of huge limestone deposits came to be discovered by the beginning of this century. Quarrying operations on small scale began. Direct human interference in limestone quarrying seems to have begun in 1900. Around 1904 all the quarries were declared as property of the government and as appears from the Bandopadhyay report, in the year 1911 there existed only four limestone quarries. It had been working in the Dehra Dun area. Around 1947, limestone quarrying took a new turn and a number of persons who had migrated from Pakistan started working on limestone deposits by quarrying in private lands. In 1949, the Minerals Concession Rules made by the Central Government under the Minerals Regulation Act, 1948, authorised grant of mining and several applicants came forward for quarrying of high grade limestone. Until 1962, extraction of limestone was permitted on temporary permits by the state government of Uttar Pradesh.

16. In these proceedings we came across 105 mining leases and these, as the various reports have indicated, had direct environmental impact on the area. It is said that the limestone deposits in this area are of high grade having up to 99.8 per cent calcium carbonate. Mining operations in these areas have led to cutting down of the forest. Digging of limestone and allowing the waste to roll down or be carried down by rain water to the lower levels has affected the villages as also the agricultural lands located below the hills. The naturally formed streams have been blocked. Blasting has disturbed the natural quiet, has shaken the soil, loosened the rocky structures and disturbed the entire ecology of the area. For removing the limestone quarried from the mines, roads have been laid and for that purpose the hills have been interfered with; traffic hazard for the local population - Both animals and men has increased.

17. The limestone quarries in this area are estimated to satisfy roughly three per cent of the country's demand for such raw material and we were told during the hearing that the Tata Iron and Steel Company is the largest consumer of this limestone for manufacture of a special kind of steel. At the present rate of mining, the deposits are likely to last some 50 years. It is for the Government and the Nation - And not for the court - To decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, government should take a policy decision and firmly implement the same.

18. Governments - Both at the Centre and in the State - Must realize and remain cognizant of the fact that the stake involved in the matter is large and far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may perish and the Thar desert may expand its limits.

19. Consciousness for environmental protection is of recent origin. The United Nations Conference on World Environment held in Stockholm in June 1972 and the follow-up action thereafter is

spreading the awareness. Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be realised. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. We had commended earlier to the State of Uttar Pradesh as also to the Union of India that afforestation activity may be carried out in the whole valley and the hills. We have been told that such activity has been undertaken. We are not oblivious of the fact that natural resources has got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.

20. We must place on record our appreciation of the steps taken by the Rural Litigation and Entitlement Kendra. But for this move, all that has happened perhaps may not have come. Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen it is his fundamental duty as enshrined in Article 51-A (g) of the Constitution.

21. We are of the view that the Kendra should be entitled to the costs of this proceeding. We assess the same at Rs. 10,000 and direct the State of Uttar Pradesh to pay the same either directly or through court within one month.

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